

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of the Petition of	)	
	)	
The United Power Line Council	)	WC Docket No. 06-10
	)	
For a Declaratory Ruling Regarding the	)	
Classification of Broadband Over Power	)	
Line Internet Access Service As	)	
An Information Service	)	

**COMMENTS OF THE TELECOMMUNICATIONS INDUSTRY ASSOCIATION  
IN SUPPORT OF THE UNITED POWER LINE COUNCIL PETITION FOR  
DECLARATORY RULING**

The Telecommunications Industry Association (TIA) respectfully comments in support of the United Power Line Council’s Petition for Declaratory Ruling in the above-captioned proceeding.<sup>1</sup> TIA urges the Federal Communications Commission (Commission) to grant the Petition as consistent with the agency’s efforts to establish a uniform, minimally regulated environment for Internet access services provided across all broadband platforms.

TIA is the leading trade association for the information and communications technology (ICT) industry, with 600 member companies that manufacture or supply the equipment, products and services used in global communications across all technology platforms, including broadband over power line (BPL). TIA represents its members on the full range of public policy issues affecting the ICT industry, owns and produces GLOBALCOMM™ – the next-generation global communications marketplace and summit, and is fully accredited by the American National Standards Institute (ANSI) to produce industry consensus standards.

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<sup>1</sup> United Power Line Council Petition for Declaratory Ruling (filed Dec. 23, 2005) (“*UPLC Petition*”); see FCC Public Notice DA 06-49 (Jan. 11, 2006).

TIA's policy goals have always centered on competition, investment and innovation. Our view consistently has been that the best way to achieve a climate conducive to these objectives is through a minimally regulated environment for new advanced – or broadband – networks and services, from our support for the inclusion of Section 706 in the Telecommunications Act of 1996<sup>2</sup> through last fall's release of the *Wireline Broadband Order*.<sup>3</sup> TIA actively sought Commission classification of telephone company wireline broadband Internet access and cable modem services as “information services,”<sup>4</sup> going so far as to file an *amicus curiae* brief with the U.S. Supreme Court in the *Brand X* case.<sup>5</sup>

Commission actions on broadband issues to date have been in line with the positions endorsed by TIA, no doubt due to these shared objectives of competition, investment and

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<sup>2</sup> Public Law 104-104, 110 Stat. 56 (1996). Section 706 is reproduced in the notes to Section 157 of the Act. See 47 U.S.C. § 157 nt.

<sup>3</sup> *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Report and Order and Notice of Proposed Rulemaking, CC Docket No. 02-33 (released Sept. 23, 2005) (“*Wireline Broadband Order*”).

<sup>4</sup> The Communications Act, as amended, defines “information service” as “the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications.” 47 U.S.C. 153(20).

<sup>5</sup> Brief of Telecommunications Industry Association as *Amicus Curiae* in Support of Petitioner, *Nat'l Cable and Telecomms. Ass'n v. Brand X Internet Servs.*, 125 S.Ct. 2688 (2005) (“*Brand X*”). See also Comments of the High Tech Broadband Coalition in *Appropriate Regulatory Treatment for Broadband Access to the Internet over Cable Facilities*, CS Docket No. 02-52 (filed June 17, 2002); Reply Comments of the High Tech Broadband Coalition in *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33 (filed July 1, 2002).

innovation.<sup>6</sup> TIA believes the only possible determination regarding the classification of BPL-enabled Internet access service is a finding that it is an information service under the Communications Act, as amended. Broadband Internet access provided over BPL is a service that clearly is functionally and technically comparable to cable modem and wireline broadband Internet access services; therefore, its network providers, technology suppliers, investors and consumers deserve the same regulatory clarity now enjoyed by the latter.

The Commission in the *Wireline Broadband Order* indicated that it would address other broadband platforms, such as BPL, “in a manner not inconsistent with the analysis and conclusions” it made therein.<sup>7</sup> As UPLC explains in its Petition, functionally and technically, BPL broadband Internet access is like DSL and cable modem services in that it combines computer processing and transmission capabilities into an integrated and interactive service offering,<sup>8</sup> the touchstones of the Commission’s “information services” test upheld by the U.S. Supreme Court.<sup>9</sup>

Policy and public interest considerations make such a Commission determination timely and well founded. The movement, embraced by the Commission, away from a government-managed communications market to one more reliant on market forces begs for policies that

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<sup>6</sup> For example, in addition to this issue of classification of broadband Internet access services, TIA was a principle advocate of the relief afforded incumbent local exchange carriers from the unbundling obligations of Section 251 for investment in new, last mile broadband facilities. *See Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978 (*Triennial Review Order*), *aff’d in part, remanded in part, vacated in part*, *United States Tel. Ass’n v. FCC*, 359 F.3d 554, 564-93 (D.C. Cir.), *cert. denied*, 125 S. Ct. 313 (2004) (upholding the broadband-related aspects of the *Triennial Review Order*). *See* Comments of the Telecommunications Industry Association (filed Apr. 5, 2002); Reply Comments of the Telecommunications Industry Association (filed July 17, 2002).

<sup>7</sup> *Wireline Broadband Order* at n. 30.

<sup>8</sup> *UPLC Petition* at 3-5.

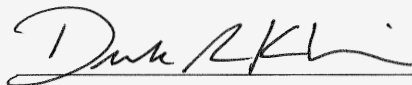
<sup>9</sup> *See, e.g., Brand X*, 125 S. Ct. 2688 (2005).

promote new facilities-based entrants. While the broadband market remains relatively nascent, market entry nonetheless is expensive and risky. This is compounded by the fact that BPL technology essentially remains untested in terms of large-scale deployments. Settling the regulatory classification of BPL would remove at least one uncertainty that utilities and their investors must consider in deciding whether or not to deploy broadband and offer consumers advanced services over a competitive platform.

For all of the above reasons, TIA therefore urges the Commission to grant the UPLC Petition for Declaratory Ruling and affirmatively determine that broadband Internet access services provided over power line technologies are “information services” under the Communications Act.

Respectfully submitted,

TELECOMMUNICATIONS INDUSTRY ASSOCIATION

A handwritten signature in black ink, appearing to read 'Derek R. Khlopin', written over a horizontal line.

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